

108TH CONGRESS  
2D SESSION

# H. R. 5275

To provide for the remittance to certain Indian veterans of amounts withheld from military basic pay for State income tax purposes for periods of time those veterans were in active service and were domiciled in Indian country.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2004

Mr. UDALL of New Mexico (for himself, Mr. GEORGE MILLER of California, Mr. RAHALL, and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

To provide for the remittance to certain Indian veterans of amounts withheld from military basic pay for State income tax purposes for periods of time those veterans were in active service and were domiciled in Indian country.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “American Indian Vet-  
5       erans Pay Restoration Act of 2004”.

1 **SEC. 2. REMITTANCE TO CERTAIN INDIAN VETERANS OF**  
2 **AMOUNTS WITHHELD FROM MILITARY BASIC**  
3 **PAY FOR STATE INCOME TAX PURPOSES.**

4 (a) PAYMENT.—The Secretary concerned shall pay to  
5 each person who is a qualifying Indian veteran an amount  
6 equal to the amount of basic pay of that person withheld  
7 as State income tax as determined under subsection (c).  
8 The Secretary shall ensure that such payments are made  
9 as expeditiously as possible, subject to subsection (f).

10 (b) QUALIFYING INDIAN VETERANS.—For purposes  
11 of this section, a qualifying Indian veteran is a person  
12 who—

13 (1) is a member of a federally recognized In-  
14 dian tribe;

15 (2) is or was a member of the uniformed serv-  
16 ices; and

17 (3) while performing active service in the uni-  
18 formed services, incurred State income tax with-  
19 holding from basic pay for a period during which the  
20 legal domicile of that Indian was in Indian country.

21 (c) DETERMINATION OF AMOUNT TO BE PAID.—The  
22 amount to be paid to any person under this section is the  
23 total amount of State income tax withholding from basic  
24 pay incurred by that person for periods during which the  
25 legal domicile of that person was in Indian country, re-  
26 duced by any amount of such withholding previously recov-

1 ered by that person from the State with respect to which  
2 such withholding was made. Interest on any such with-  
3 holding during any calendar year shall be allowed and paid  
4 (using the overpayment rate determined under section  
5 6621 of the Internal Revenue Code of 1986 and com-  
6 pounded daily) from January 1 of the following calendar  
7 year to a date to be determined by the Secretary con-  
8 cerned. Such date may precede the date of the refund  
9 check by not more than 30 days, whether or not such re-  
10 fund check is accepted by the taxpayer after tender of  
11 such check to the taxpayer. The acceptance of such check  
12 shall be without prejudice to any right of the taxpayer to  
13 claim any additional payment and interest thereon.

14 (d) SURVIVORS.—In the case of a qualifying Indian  
15 veteran who is deceased, the Secretary concerned shall  
16 make a payment under this section, upon receipt of an  
17 application under subsection (e), in the same manner as  
18 specified in section 1477 of title 10, United States Code,  
19 for the payment of a death gratuity under section 1475  
20 or 1476 of such title.

21 (e) APPLICATIONS.—A person seeking a payment  
22 under this section shall submit to the Secretary concerned  
23 an application for such payment. Any such application  
24 shall be in such form and shall include such information  
25 as the Secretary may require, including information at-

1 testing to the status of such person as a Indian and attest-  
2 ing to the domicile of such person, while a member of the  
3 uniformed services, in Indian country. Such application  
4 shall also include the applicant's attestation that the  
5 amount of State income tax withholding for which the ap-  
6 plication is submitted has not previously been recovered  
7 by that person from the relevant State.

8 (f) FUNDING.—Payments under this section shall be  
9 made from amounts appropriated or otherwise made avail-  
10 able for such purpose in appropriations Acts. There is au-  
11 thorized to be appropriated for the purposes of this section  
12 the amount of \$5,000,000.

13 (g) RECOVERY FROM STATES.—When the Secretary  
14 concerned makes a payment under this section to any per-  
15 son, the United States shall become subrogated to any  
16 claim of that person against a State for the amount so  
17 paid, and the Secretary shall seek to recover from that  
18 State the amount (including interest) so paid. The Sec-  
19 retary shall have the right to recover such amount, by off-  
20 set, from any amount otherwise payable by the Secretary  
21 to that State under any other program or activity.

22 (h) DEFINITIONS.—In this section:

23 (1) SECRETARY CONCERNED.—The term “Sec-  
24 retary concerned” has the meaning given that term  
25 in section 101 of title 37, United States Code.

1           (2) UNIFORMED SERVICES.—The term “uni-  
2       formed services” has the meaning given that term in  
3       section 101 of title 37, United States Code.

4           (3) INDIAN COUNTRY.—The term “Indian coun-  
5       try” has the meaning given that term in subsections  
6       (a) and (b) of section 1151 of title 18, United States  
7       Code.

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